

STAFF REPORT

MAPC: December 14, 2023

DAB VI: December 11, 2023

<u>CASE NUMBER:</u>	CON2023-00057 (City)
<u>APPLICANT/AGENT:</u>	Steckline Communications. (Applicant)
<u>REQUEST:</u>	Conditional Use for a Wireless Communications Facility
<u>CURRENT ZONING:</u>	SF-5 Single-Family Residential District
<u>SITE SIZE:</u>	14 acres
<u>LOCATION:</u>	Generally located one-quarter mile south of West 29 th Street North within one-half mile west of North Arkansas Avenue (2829 North Salina Avenue).
<u>PROPOSED USE:</u>	499-foot-tall radio tower
<u>RECOMMENDATION:</u>	Approve with conditions.



BACKGROUND: The applicant is requesting:

1. a Conditional Use to allow the placement of a 499-foot-tall tower on the property; and
2. a waiver of the compatibility height standards of Section IV-C.5.b of the Unified Zoning Code.

The subject site is generally located approximately 1,000 feet south of West 29th Street North and approximately one-half mile west of North Arkansas Avenue (2829 North Salina Avenue). The 14 acre site is zoned SF-5 Single-Family Residential District and is developed with five (5), 188-foot-tall radio towers. The purpose of the application is to replace a former, 519-foot-tall radio tower that was removed approximately seven years ago. As seen on the attached site plan, the proposed tower would be constructed south and west of the former location. The existing towers and the proposed replacement tower are slender lattice towers and are stabilized with guy-wires. The replacement tower structure is 36 inches square. The existing towers were constructed prior to current zoning standards and are legal non-conforming uses.

Section III-A.2.d of the Wichita-Sedgwick County Wireless Communication Master Plan limits the height of towers in the SF-5 Single-Family Residential District that can be approved by Administrative Permit to 120 feet as long as it complies with the compatibility height standards of the Unified Zoning Code (UZC). The proposed 499-foot tower exceeds the ability to be approved by Administrative Permit, and it does not meet the compatibility height standards set forth in Section IV-C.5.b of the UZC. The compatibility height standards for Wireless Communication Facilities are as follows:

Wireless Communication Facilities shall not exceed a height equal to the distance to the Lot line of the property zoned TF-3 or more restrictive. For example, a Wireless Communication Facility located 100 feet from the Lot Line of property zoned TF-3 or more restrictive cannot exceed a height of 100 feet.

The proposed 499-foot tower is 260 feet from the north property line and 275 feet from the east property line. In comparison, the former 519-foot tower was 130 feet from the east property line and 160 feet from the north property line. The new tower is farther from the abutting, residential property lines but, it does not meet the height compatibility standards. Should the Conditional Use request be approved, the compatibility height standards must be waived in order for the tower to be constructed as proposed by the applicant.

The proposed tower would be accessed via the existing driveway off West 29th Street North. The applicant indicates this tower will be a slender (36 inches) lattice structure stabilized by guy-wires. Section III-B of the Wireless Communication Master Plan encourages the design of a tower to minimize the visual impact. Self-supporting lattice towers are discouraged. The applicant has indicated that the lattice tower proposed for this site has less visual impact than self-supporting lattice structures as it is slender and supported by guy-wires. The subject site is enclosed by a chain-link fence, which does not meet the minimum screening standards of Section IV-B of the Unified Zoning Code. In order to be in compliance with the screening standards, the compound of the new tower is required to be screened on all four sides with a minimum six-foot-tall screening fence.

KSA 66-2019(f) specifies 18 prohibitions when considering an application for a communication structure. A list of all 18 prohibitions is provided as an attachment to this staff report.

The character of the surrounding area is residential. Properties to the north, east, south, and west are zoned SF-5 Single-Family Residential District. Properties to the north, east, and south are developed with single-family dwellings. Properties to the west are developed with single-family dwellings, their rear yards are separated from the subject site by the Little Arkansas River.

CASE HISTORY: The subject site unplatted and is exempt from platting. Section 3-104 permits rebuilding of an existing principal structure without triggering the requirement for platting.

ADJACENT ZONING AND LAND USE:

NORTH:	SF-5	Single-family dwellings
SOUTH:	SF-5	Single-family dwellings
EAST:	SF-5	Single-family dwellings
WEST:	SF-5	Single-family dwelling

PUBLIC SERVICES: The proposed Wireless Communication Facility will not require any municipal services. The site has access to West 29th Street North, which is a paved, three-lane arterial street with sidewalks on both sides. Wichita Transit has stops nearby, approximately one-half mile west at the intersection of North Amidon Avenue and West 29th Street North.

CONFORMANCE TO PLANS/POLICIES:

The combined conclusion for conformance to the Plans and Policies is this request complies with the overall spirit and intent to accommodate both the expansion of wireless communication capabilities within the City, while honoring the introduction of this type of use at this location by requiring the Conditional Use approval process and applying all the Supplementary Use Regulations to the property to mitigate the impacts associated with the new development.

Community Investments Plan

The requested Conditional Use is in conformance with land use categories of *The Community Investments Plan*. The *Community Investments Plan* (the Wichita-Sedgwick County Comprehensive Plan) includes the 2035 Future Growth Concept Map. The Map identifies the area to be located in a “Commercial” area, which the *Plan* defines as “areas that reflect the full diversity of commercial development intensities and types typically found in a large urban municipality.”

The requested Conditional Use is in partial conformance with the Locational Guidelines for land use compatibility of the *Community Investments Plan*. Commercial uses that generate pollution, odor, noise, light, safety hazards, and high levels of traffic should be located away from residential areas and developed with screening, buffering, and site design features sufficient to mitigate adverse impacts. Though the proposed tower does not generate pollution, odor, noise, light, or traffic, there is the possibility of the safety hazard given its height and fall zone. The proposed location does place the tower farther from the residences to the east and north than the previous tower, which reduces the number of properties that may be detrimentally affected should an incident occur. The tower is secured by three sets of guy wires which are designed to minimize the likelihood of the tower collapsing.

Wireless Communication Master Plan

The requested Conditional Use is not in conformance with the Location/Design Guidelines of the Wireless Communication Master Plan (adopted January 2019). The Guidelines state that “*In general, tall wireless communication facilities should be limited to heavy commercial and industrial areas and should decrease in height as the intensity of development decreases, with the shortest facilities being located in residential areas.*” Though it is not in conformance with the Location/Design Guidelines, the site has been developed with tall radio towers prior to the current zoning standards. The request is to replace a former 519-foot tower. If approved, the end result would not result in more towers than the site historically has had.

RECOMMENDATION: Based upon the information available prior to the public hearings, planning staff recommends that the request be **APPROVED**, including a waiver of the compatibility height standards in Section IV-C.5.b, and subject to the following conditions:

1. All requirements of Section III-D.6.g of the Unified Zoning Code shall be met.

2. The applicant shall obtain all permits necessary to construct the Wireless Communication Facility within 50 days of submittal of the building permit application, and the Wireless Communication Facility shall be erected within one year of final approval of the Conditional Use.
3. The support structure shall be no taller than 499 feet in height.
4. The site shall be developed in general conformance with the approved site plans. All improvements shall be completed before the facility becomes operational.
5. The applicant shall obtain from the FAA and provide to MAPD a Determination of No Hazard for any obstruction proposed under this application. This FAA determination shall be based upon coordinates and elevations taken by a licensed and qualified land surveyor and conform to FAA's most precise, current accuracy tolerance standards. The applicant shall demonstrate to the MAPD, with concurrence of the Wichita Airport Authority, that any obstructions proposed under this application would not adversely affect or alter any precision or non-precision instrument approaches.
6. The site shall be developed and operated in compliance with all federal, state, and local rules and regulations.
7. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in Article VIII of the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The character of the surrounding area is residential. Properties to the north, east, south, and west are zoned SF-5 Single-Family Residential District. Properties to the north, east, and south are developed with single-family dwellings. Properties to the west are developed with single-family dwellings, their rear yards are separated from the subject site by the Little Arkansas River.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned SF-5 Single-Family Residential District and developed with five (5), 188-foot-tall towers. The site is legal-nonconforming as the towers were constructed prior to the current zoning standards.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The proposed tower is a replacement of a former, 519-foot tower on the same site. The former tower was closer to the residential property lines. The proposed tower would be located south and west of the former location, farther from residential property lines. The slender lattice structure supported by guy-wires has less visual impact than self-supporting lattice towers. The site has several, existing tall towers. The placement of a 499-foot tower could have detrimental impacts on surrounding properties in that several properties are included in the fall zone radius. The tower is secured by three sets of guy wires which are designed to minimize the likelihood of the tower collapsing.
4. Length of time the property has been vacant as currently zoned: The subject site is not vacant. It currently is developed with five, 188-foot-tall towers.
5. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: Approval of the request would mean economic gain for the applicant, which is generally considered a gain to the public welfare. Approval would also promote the public interest in growing and maintaining reliable wireless services. Approval could have negative impacts on public health and safety due to the proximity of the tower to the nearby residential structure because the tower does not meet the compatibility height standards, which are designed to promote safety of nearby

properties should the tower fall. Denial would presumably represent a loss of economic opportunity to the applicant and/or land owner.

6. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The requested Conditional Use is in conformance with the *Community Investments Plan*, but it is not in conformance with the *Wireless Communication Master Plan*, as discussed in the report.
7. Impact on the proposed development on community facilities: Construction of a Wireless Communications Facility is not anticipated to have detrimental impacts on community facilities.
8. Opposition or support of neighborhood residents: At the time of the publication of the staff report, staff has not received any public comment regarding this application.

Attachments:

1. KSA 66-2019(f) List of Prohibitions
2. Supplementary Use Regulations Section III-D.6.g
3. Site Plan and Fall Zone Map submitted by Applicant
4. Aerial Map
5. Zoning Map
6. Land Use Map
7. Site Photos

KSA 66-2019(f). Siting of wireless infrastructure; public lands and public right-of-way; wireless providers and governing bodies, rights and requirements for application process.

(a) The Kansas legislature finds and declares that:

To ensure uniformity across the state with respect to consideration of every application, an authority shall not:

(1) Require an applicant to submit information about, or evaluate an applicant's business decisions with respect to, the applicant's designed service, customer demand for service or quality of the applicant's service to or from a particular area or site. An authority may require an applicant filing an application for a new wireless support structure to state in such application that the applicant conducted an analysis of available collocation opportunities on existing wireless support structures within the same search ring defined by the applicant, solely for the purpose of confirming that an applicant undertook such analysis;

(2) require information that concerns the specific need for the wireless support structure, including if the service to be provided from the wireless support structure is to add additional wireless coverage or additional wireless capacity. An authority may not require proprietary, confidential or other business information to justify the need for the new wireless support structure, including propagation maps and telecommunications traffic studies;

(3) evaluate an application based on the availability of other potential locations for the placement of wireless support structures or wireless facilities including, but not limited to, the option to collocate, instead of construct, a new wireless support structure or for substantial modifications of a support structure;

(4) dictate the type of transmission equipment or technology to be used by the applicant including, but not limited to, requiring an applicant to construct a distributed antenna system or small cell facility in lieu of constructing a new wireless support structure or discriminate between different types of infrastructure or technology;

(5) require the removal of existing wireless support structures or wireless facilities, wherever located, as a condition for approval of an application. This paragraph shall not preclude an authority from adopting reasonable rules with respect to the removal of abandoned wireless support structures or wireless facilities;

(6) impose any restrictions at or near civilian airports with respect to objects in navigable airspace height limitations, proximity to civilian airports or markings and lighting on wireless support structures or base stations that are greater than, or in conflict with, any restrictions imposed by the federal aviation administration, except that this paragraph shall not be construed so as to impact any existing height restrictions adopted by an authority as of the effective date of this section on wireless support structures or base stations located at or near civilian airports;

(7) establish or enforce regulations or procedures for radio frequency signal strength or the adequacy of service quality;

(8) impose surety requirements, including bonds, escrow deposits, letters of credit or any other type of financial surety to ensure that abandoned or unused facilities can be removed, unless the authority imposes similar requirements on other permits for other types of commercial development or land uses, and any such instrument cannot exceed a reasonable estimate of the direct cost of the removal of the facility. If surety requirements are imposed, any such requirements shall be competitively neutral, non-discriminatory, reasonable in amount and commensurate with the historical record for local facilities and structures that are abandoned;

(9) discriminate or create a preference on the basis of the ownership of any property, structure, base station or wireless support structure when promulgating rules or procedures for siting wireless facilities or for evaluating applications or require the placement of wireless support structures or wireless facilities on

property owned or leased by the authority, but an authority may develop a process to encourage the placement of wireless support structures or wireless facilities on property owned or leased by the authority, including an expedited approval process. Nothing in this subsection shall be construed to hinder or restrict the siting of public safety communications towers, including, but not limited to, police and fire;

(10) impose any unreasonable requirements or obligations regarding the presentation, appearance or function of the wireless facilities and equipment including, but not limited to, those relating to any kinds of materials used and those relating to arranging, screening or landscaping of facilities. In developing such a requirement or obligation for wireless facilities located on a public right-of-way, the authority shall consider input from property owners adjoining the affected public right-of-way;

(11) impose any requirements that an applicant purchase, subscribe to, use or employ facilities, networks or services owned, provided or operated by an authority, in whole or in part, or by any entity in which the authority has a competitive, economic, financial, governance or other interest;

(12) impose environmental testing, sampling or monitoring requirements that exceed federal law;

(13) impose any compliance measures for radio frequency emissions or exposure from wireless facilities that exceed the requirements of the federal communications commission rules for radio frequency;

(14) in conformance with 47 U.S.C. § 332(c)(7)(B)(iv), reject an application, in whole or in part, based on perceived or alleged environmental effects of radio frequency emissions or exposure;

(15) prohibit the use of emergency power systems that comply with federal and state environmental requirements and do not violate local health and safety requirements and local noise control ordinances, but no local regulations shall prevent the provision of emergency power during an actual emergency;

(16) condition or require the approval of an application based on the applicant's agreement to permit any wireless facilities provided or operated, in whole or in part, by an authority or by any other entity to be placed at, or collocated with, the applicant's wireless support structure;

(17) impose a greater setback or fall-zone requirement for a wireless support structure than for other types of commercial structure of a similar size; or

(18) limit, for less than 10 years, the duration of the approval of an application. Any renewals shall be negotiated in good faith. Construction of the approved structure or facilities shall commence within one year of final approval and shall be diligently pursued to completion.

Supplementary Use Regulations Section III-D.6.g

g. Wireless Communication Facility. Whether allowed by right, subject to a Building Permit, by Administrative Permit, by CUP adjustment/ amendment, by P-O adjustment/amendment or by Conditional Use approval, a Wireless Communication Facility shall be subject to the following provisions.

(1) A Wireless Communication Facility shall be evaluated in terms of conformance to the guidelines in the "Wireless Communication Master Plan" as adopted by the Governing Body, and applications for such facilities shall include information for review as required in that Plan.

(2) A following Wireless Communication Facility is permitted by right in any zoning District, subject to the issuance of a Building Permit, if it conforms to the Location/Design Guidelines in that Plan:

(a) New facility that is concealed in or mounted on top of or the side of existing buildings (excluding single-family and duplex residences) and other Structures, including support structures up to 20 feet above the Building or the maximum height permitted by a Building Permit or an Administrative Permit in the underlying zoning District, whichever is greater;

(b) Modification and/or replacement of support structures (light poles, flag poles, electrical poles, private dispatch towers, etc.) that are not significantly more visible or intrusive, including cumulative height extensions of up to 25 percent above the original Structure height;

(c) Modification and/or replacement of a Wireless Communication Facility, including cumulative height extensions of up to 25 percent above the original structure height that comply with the compatibility height standards as outlined in Sec. IV-C.5;

(d) New or modified lattice towers no larger than 18 inches wide on any side up to 80 feet in height measured from grade.

(e) Small cell facility or distributed antennae system located in an interior Structure or upon the site of any campus, stadium, or athletic facility.

If the Zoning Administrator determines that the Wireless Communication Facility does not conform to the Location/Design Guidelines, the Building Permit shall be denied. Denied Building Permits may be appealed by applying for an Administrative Permit or a Conditional Use. An Administrative Permit shall be approved subject to conditions that maintain conformance with the Location/Design Guidelines. A Wireless Communication Facility that does not conform to the Location/Design Guidelines may be approved for a Conditional Use on a case-by-case basis as circumstances warrant.

(3) A Wireless Communication Facility shall be approved by Administrative Permit in any zoning District, under the procedures in Sec. VI-G.9 and Sec. VI-H.5, if it conforms to the Location/Design Guidelines in the "Wireless Communication Master Plan" and, for zoning Lots located within the City, is designated on the "Properties Eligible for an Administrative Permit for a Wireless Communication Facility Map" of Sec. I-L.:

(a) New disguised ground-mounted facilities up to 85 feet in height;

(b) New undisguised ground-mounted facilities up to 65 feet in the SF-10, SF-5, TF-3, MF-18, MF-29, B and MH zoning Districts that comply with the compatibility height standards as outlined in Sec. IV-C.5, which shall not be reduced or waived through the provisions of Sec. V-I.2.e.;

(c) New undisguised ground-mounted facilities up to 85 feet in the NO, GO and NR zoning Districts that comply with the compatibility height standards as outlined in Sec. IV-C.5, which shall not be reduced or waived through the provisions of Sec. V-I.2.e.;

(d) New ground-mounted facilities up to 120 feet in height in the RR, SF-20, U, LC, OW, and GC zoning Districts that comply with the compatibility height standards as outlined in Sec. IV-C.5, which shall not be reduced or waived through the provisions of Sec. V-I.2.e.; or

(e) New ground-mounted facilities up to 150 feet in height in the IP, CBD, LI and GI zoning Districts that comply with the compatibility height standards as outlined in Sec. IV-C.5, which shall not be reduced or waived through the provisions of Sec. V-I.2.e.

If the property on which the facility is located is within a CUP or P-O, the Administrative Permit shall also be considered as an application for an adjustment of the CUP or P-O as outlined in Sec. V-E.14, excluding the requirement of V-E.14.a, or Sec. V-C.14, excluding the requirement of V-C.14.a., as applicable.

(4) A Wireless Communication Facility that does not meet the requirements of Sec. III-D.6.g(2) or Sec. III-D.6.g(3) shall be reviewed through the Conditional Use process as outlined in Sec. V-D or, if the property on which the facility is located is within a CUP or P-O, as an amendment to the CUP or P-O as outlined in Sec. V-E.13. or Sec. V-C.13, as applicable.

(5) There shall be no nighttime lighting of or on a Wireless Communication Facility except for aircraft warning lights or similar emergency warning lights required by applicable governmental agencies. Flashing white obstruction lights shall not be permitted for nighttime operation. Lighting for security purposes shall be permitted at the base of wireless communication facilities. Temporary lighting for nighttime repairs shall be permitted.

(6) No signs shall be allowed on a Wireless Communication Facility other than those required by applicable governmental agencies.

(7) Unused facilities, including the uppermost 20 percent of support structures that are unused (except where removal of the uppermost 20 percent would require the removal of a lower portion the support structure that is in use, in which case the required removal will be raised to the next highest portion of the support structure not in use), shall be removed by the owner within 60 days if the Wireless Communication Facility, or portion thereof, has been unused for 12 consecutive months. If such a facility or portion of a facility is not removed by the owner, then the City or County may employ all legal measures, including, if necessary, obtaining authorization from a court of competent jurisdiction, to remove it, and after removal may place a lien on the subject property for all direct and indirect costs incurred in its dismantling and disposal, including court costs and reasonable attorney fees. Under this paragraph, "owner" shall include both the Owner of the real property and the owner of the Wireless Communication Facility, whether such ownership is divided or in the same person.

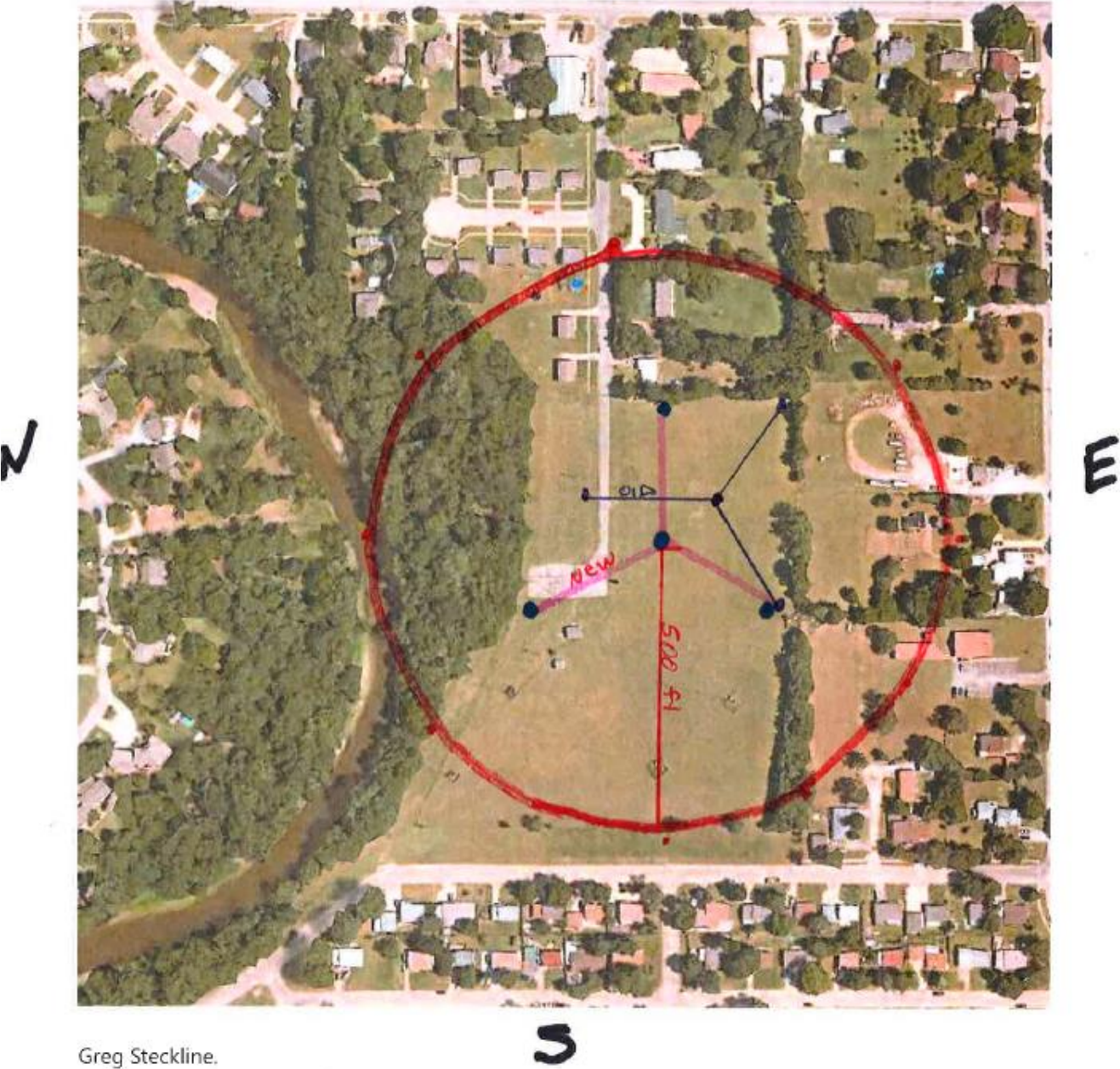
(8) All Wireless Communication Facilities shall comply with all federal, state, and local rules and regulations.

Site Plan and Fall Zone Maps

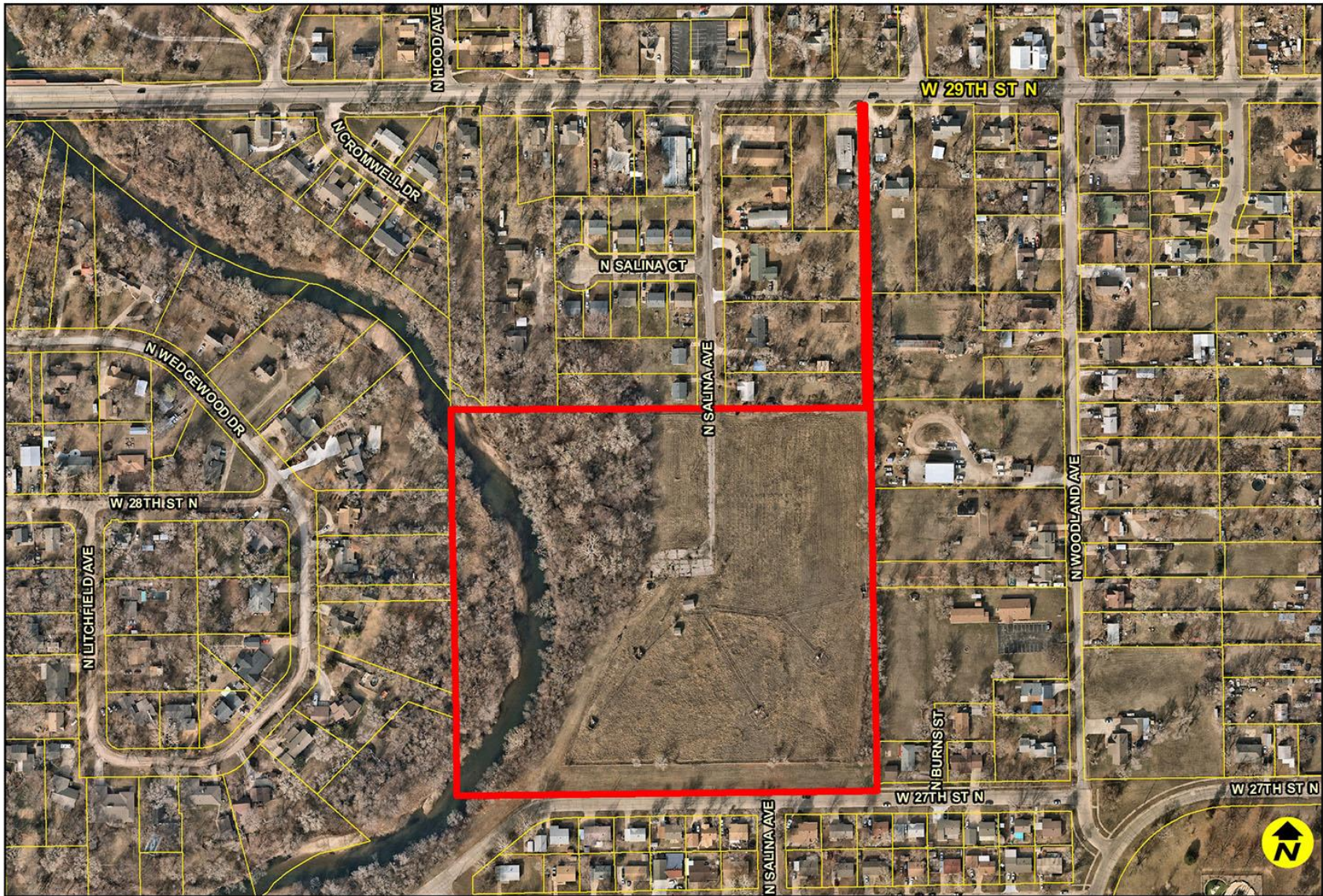
Screenshot 2023-12-04 at 10.05.35 AM
Greg Steckline <GSteckline@maanradio.com>
Mon 12/4/2023 10:06 AM
To: Greg Steckline <GSteckline@maanradio.com>



Steckline Communications
KQSO Tower
2829 N. Solina
Wichita, Ks.








Greg Steckline.






2035 Wichita Future Growth Concept Map

Legend

-  Established Central Area
-  Residential and Employment Mix
-  New Employment
-  New Residential
-  Wichita City Limits
-  Other Cities
-  Northwest Bypass Right-of-Way

Statistical Development Areas

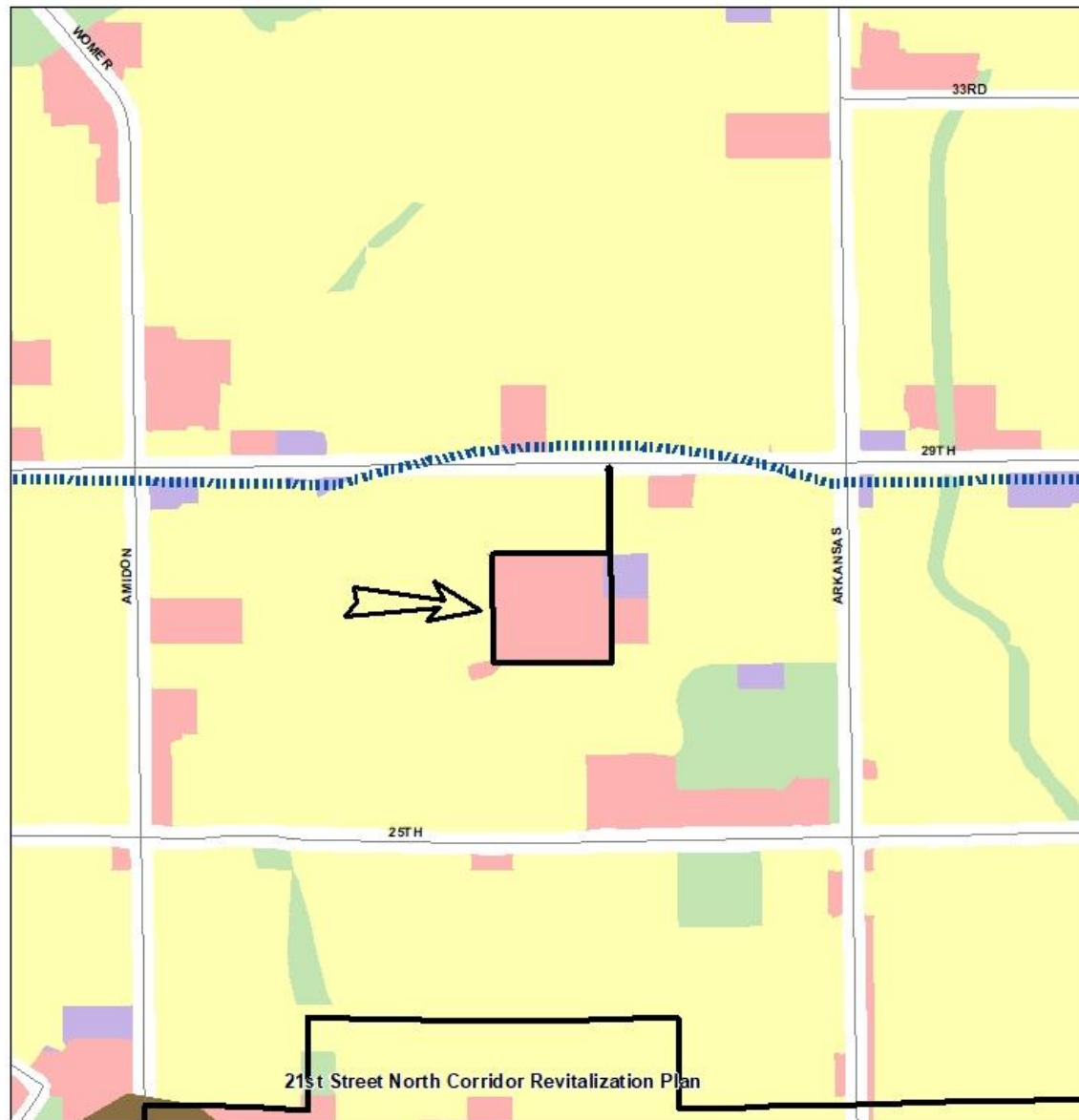
-  Small City Urban Growth Areas
-  Small City Urban Growth Areas
-  Rural Areas

LAND USE

-  Residential
-  Commercial
-  Industrial
-  Major Air Transportation & Military
-  Parks and Open Space
-  Agricultural or Vacant
-  Major Institutional
-  Neighborhood/Area Plans



Map prepared by the Metropolitan Area Planning Commission (MPC) in cooperation with the City of Wichita. The map is for informational purposes only and does not constitute a guarantee, warranty, or endorsement of any product or service by the MPC or the City of Wichita. The map is subject to change without notice.



Looking southeast at site



Looking northwest away from site



Looking south at site



Looking northeast away from site



Looking northeast at site



Looking southeast away from site



Looking northwest at site

